IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No. 379/2003.

Nasir S/o Mohd. Arif
R/o Line No. 12 Azad Nagar
Haldwani (Nainital)

…. Appellant.

Versus

1- Tanveer S/o Musharraf
R/o Gutrana P.O. & P.S. Babri
District Muzaffar Nagar,
Owner of truck No. HR. 06A-7167

2- M/S National Insurance Company
Divisional Office Tikonia Haldwani
(Nainital) …Respondents.

Sri Z.U. Siddiqui, learned counsel for the appellant.
Sri D.S. Patni learned counsel for the Insurance Company.

Coram: Hon'ble P.C. Verma,J.
Hon'ble B.C. Kandpal,J.

Dated: 13-06-2006

This appeal, U/S 173 of the Motor Vehicles Act, has been preferred against the judgment and award dated 25-6-2003, passed by M.A.C.T./District Judge, Nainital, in M.A.C.P. No. 211/1999 Mohd. Nasir Vs. Anil Kumar and three others, whereby the claimant was awarded Rs. 62,631-15 as compensation, along with interest @ 6% per annum from the date of the petition till final payment against the National Insurance Company.

2- Briefly stated the facts of the case are that on 7-11-1999 at about 10 A.M. the claimant Mohd. Nasir was going to Kichha travelling in Jeep No. U.M.M. 9980. In front of the said jeep, truck No. H.R.06-A/7167 was going on the road. When the Truck reached near Krishna Stone Crusher , it turned towards the Stone Crusher due to which the driver of the jeep could not control the jeep and both the vehicles collided with each other due to which the claimant along with other passengers sustained grievous injuries. The claimant was brought to Hospital at Haldwani. The claimant alleged that in the accident his femur, ribs and shoulder

were fractured. The claimant was bed-ridden for about six months. It was also alleged that the claimant was a good mechanic of the vehicles and was earning Rs. 6000/- per month from the work of mechanic. The claimant therefore filed claim petition for compensation of Rs. Ten lacs.

3. The O.P. Anil Kumar, the owner of the offending jeep No. U.R.M. 9980 filed W.S. and alleged that his jeep was not involved in the said accident. It was also alleged that the jeep was insured with New India Assurance Company and the company is liable to the compensation.

4- The O.P. New India Assurance Company filed its W.S. alleging therein that the driver of the jeep was not having valid driving licence. It was also pleaded in the W.S. that the company was not given information as per the provisions of Section 156(3) M.V. Act. The Insurance Company denied the liability to pay the compensation.

5- The O.P. Tanveer Alam, the owner of the offending Truck No. H.R. 06-A/7167 also filed W.S. before the Tribunal and alleged that the accident had occurred due to the negligence of the jeep No. U.R.M. 9980 and he is not liable to pay any compensation.

6- The O.P. National Insurance Company, insurer of the offending truck No. H.R. 6-A/7167 also contested the claim petition by filing its W.S. The Insurance Company admitted the insurance of the offending truck. However, it alleged that its liability to pay compensation could be fixed on the condition when the insurance papers of the offending truck are found valid.

7- The Tribunal on the basis of the pleadings of parties framed relevant issues in the case. The claimant in support of his case examined himself as P.W.1 and Dr. Shailendra Kumar Mishra as P.W.2 and also filed some documents regarding his medical treatment. The opposite parties did not adduce any evidence.

8- The Tribunal on assessment of evidence on record awarded compensation to the tune of Rs. 62,631=15 to the claimant against the National Insurance Company, the insurer of the offending truck along with 6% per annum interest.

9- Feeling dissatisfied with the compensation amount, the claimant has filed the present appeal for enhancement of the compensation amount.

10- We have heard the learned counsel for the parties and perused the record.

11- The only point for consideration in this appeal is whether the amount of compensation awarded by the Tribunal is inadequate or not.

12- Learned counsel for the appellant has argued that the Tribunal has failed to consider the pecuniary loss caused to the appellant and his family due to his hospitalization for long time. It has also been argued that the Tribunal has not considered the future pecuniary loss as well as mental shock and agony and the pain and suffering on account of the injuries caused to the appellant. Therefore, the judgment and award passed by the Tribunal is liable to be set-aside.

13- It is true that the claimant has filed the documents showing that he invested an amount of Rs. 12,631-15 in purchase of medicines during his treatment, but to our view the claimant must have invested a huge amount in his treatment apart of the purchase of the medicines. The accident took place on 7-11-1999 and the claimant sustained grievous injuries in this accident as his right leg was fractured, left hand was also fractured and four ribs were also fractured. The claimant had to be hospitalized upto 12.12.1999. The claimant had to undergo the operations and a rod was inserted in his hand. There was plaster also in his leg. The claimant sustained compound fracture in his left hand. The doctor who has examined the claimant in the hospital has been produced as P.W. 2 and he has deposed that the condition of the claimant was precarious when he was brought to the hospital after the accident. The doctor has deposed that the claimant had to get his x-ray for eight times. The doctor has also stated that the claimant might have been bed-ridden for at least 5 to 6 months. The doctor has although stated that the claimant had not to invest any amount in his operations which were performed in the hospital but even then it is a question of general acquaintance that a person has to invest the

amount under the different heads when he is to be operated. The claimant might have invested the amount in his special diet, personal care and attendance by some attendant, conveyance etc. Therefore, under the aforesaid circumstances we can safely infer that the claimant must have invested at-least an amount of Rs. 50,000/- in his medical treatment apart of the expenses incurred in purchase of medicines. The Tribunal has awarded an amount of Rs. 10,000/- which is to be incurred in the operation of the claimant to be performed in future but we hold that this amount appears to be insufficient and this amount should be Rs. 20,000/- instead of Rs. 10,000/-. The Tribunal also awarded Rs. 20,000/- each for pain and agony and loss of income during the six months when the claimant was under treatment, which in our view is just and adequate. Therefore, keeping in view the aforesaid aspect, we are of the considered opinion that an additional amount of Rs. 60,000/- (Rs.50,000/- + Rs. 10,000/= Rs. 60,000/-) should have also been awarded by the Tribunal in favour of the claimant. It is worthy to mention here that the claimant has not suffered any permanent disability.

14- On the basis of the aforesaid calculation, we come to the conclusion that the claimant is entitled for an amount of Rs. 1,22,631=15 rounded to Rs. 1,22,600/- as compensation. As the offending truck was insured with the National Insurance Company therefore, the insurer of the vehicle, i.e. National Insurance Company is liable to pay the aforesaid amount.

15- As far as the rate of interest indicated in the impugned judgment and award in concerned the same does not require any interference.

16- The appeal is partly allowed. The impugned judgment and award 25-6-2003, passed by M.A.C.T./District Judge, Nainital, in M.A.C.P. No. 211/1999, is modified to the extent that the claimant is entitled for Rs. 1,22,600/- as compensation instead of Rs. 62,631=15. No order as to costs.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

ISB